

BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE
HOWARD C. BERMAN, JQC NO.
00-211

CASE NO. SC00-2491

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO
COMPEL
TESTIMONY OF ROXANNE RAMOS AND THE ORDER
GRANTING
MOTION TO COMPEL TESTIMONY OF ROXANNE RAMOS
DATED
JUNE 18, 2001**

JUDGE HOWARD C. BERMAN (hereinafter "Judge Berman"), through undersigned counsel, respectfully submits this Memorandum in support of his Motion to Compel Testimony of Roxanne Ramos and in further support of the Order Granting Motion to Compel Testimony of Roxanne Ramos dated June 18, 2001. Counsel for Roxanne Ramos has filed a Request for Review, served July 2, 2001, seeking review of Judge Jorgenson's Order Compelling Roxanne Ramos' Testimony by the full Hearing Panel of the Judicial Qualifications Commission.

Roxanne Ramos (hereinafter "Ms. Ramos") is a witness against Judge Berman. She alleges several incidents of inappropriate language and touching (Ramos Dep., pp. 100, 154-160). Judge Berman categorically denies her allegations. Some of the allegations of Ms. Ramos allegedly occurred in February 2000.

In October 2000, Ms. Ramos filed a Complaint with the Palm Beach County Sheriff's Office against Frank Roy, described in her Complaint as her "live-in boyfriend"

(Ramos Dep., Ex. 4). In this Complaint with the Sheriff's Office, Ms. Ramos describes both verbal and physical abuse from Mr. Roy.

An Information for Domestic Battery Against Frank Roy was filed by the State Attorney's Office (Ramos Dep., Ex. 5). The case against Mr. Roy was nolle prossed on January 10, 2001 (Ramos Dep., Ex. 5). On November 28, 2000, Ms. Ramos filed a letter addressed "To the Court" in which she said that she "overreacted in my incident report out of anger." Despite the graphic description in her Complaint, she states: "I was not battered and no criminal offense took place." (Ramos Dep., Ex. 5).

The testimony of Ms. Ramos with regard to the two contradictory statements she made with regard to Mr. Roy's alleged physical abuse and the circumstances surrounding these statements are certainly relevant as to her credibility.

In Cliburn v. State, 710 So. 2d 669, in proffered testimony the victim admitted that she had reported to the police that her live-in companion had put a gun in her mouth. She later made a written statement confessing that what she told the police was not true. The trial court excluded this evidence. The appellate court reversed, stating: "The proffered testimony concerning the false police report is admissible on retrial." The court emphasized the fact that the witness' credibility is a crucial issue. See also Williams v. State, 386 So. 2d 25 (Fla. 2d DCA 1980); Jaggers v. State, 536 So. 2d 321 (Fla. 2d DCA 1988).

These contradictory statements with regard to Mr. Roy made to the sheriff and then to the court were made in late 2000. There is no evidence in the record to suggest that Ms. Ramos is in any danger of prosecution for these statements in the case of State of Florida

v. Frank Roy. Thus, Ms. Ramos' assertion of the Fifth Amendment privilege should be rejected.

In Lande Verde v. State, 769 So. 2d 457 (Fla. 4th DCA 2000), the court addressed the procedure for resolving a conflict between a defendant's Sixth Amendment right to compel testimony and a witness' Fifth Amendment privilege. Although the defendant in Lande Verde v. State was a defendant in a criminal prosecution, the compulsory attendance of witnesses and the presentation of their testimony is applicable also in civil proceedings. See Drogaris v. Martine's Inc., 118 So. 2d 95 (Fla. 1st DCA 1960); *16B Am Jur 2d, Constitutional Law*, §962. In Lande Verde, the court states that in resolving the conflict between a defendant's right to compel testimony and a witness' Fifth Amendment privilege, the trial court must first determine whether the witness can validly assert a Fifth Amendment claim. The trial court must evaluate whether the witness is confronted by a substantial and real and not merely trifling or imaginary hazards of incrimination. This is a question of law for the court to decide. Lande Verde at 461. There is certainly no basis in this record to suggest that Ms. Ramos has any valid fear of incrimination.

Additionally, Ms. Ramos cannot selectively assert the Fifth Amendment privilege, testifying with regard to the Frank Roy incident when it suits her pleasure and refusing to testify when it does not. Her deposition was taken on May 15, 2001. That is the deposition which is the subject of Judge Berman's Motion to Compel. On June 5, 2001, Ms. Ramos testified before Judge Marra with regard to her conflicting statements. She did not assert the Fifth Amendment privilege, but answered the questions propounded by the Assistant State Attorney:

“Q. Okay. So when you first got arrested, you gave an account of what happened; is that correct?

A. Correct.

Q. Then by the time it came to trial, your account of what happened changed from the time that you first reported it; isn't that correct?

A. Correct.”

The transcript of this hearing is attached as Exhibit A.

But, more importantly, many of the questions which Ms. Ramos' counsel instructed Ms. Ramos not to answer would have absolutely no relevance to the prosecution against her for false statements to the court or to the Sheriff's Office. For example:

- “My question to you, Ms. Ramos, is what is your current relationship with Frank Roy? (Ramos Dep., p. 200).
- A series of questions relating to whether any photographs had been made by the police to substantiate the allegations which she had made against Mr. Roy (Ramos Dep., p. 210).
- “Did you ever tell any of the attorneys involved in the first instance, the October event, that you were a creative writer, and knew how to embellish details?” (Ramos Dep., p. 211).
- “Did you have any conversations with anyone at the State Attorney's Office regarding their policy on dropping charges of domestic violence?” (Ramos Dep., p. 213).
- “Ms. Ramos, did you ever tell the police that Frank Roy had taken a copy of a civil file from your house?

* * *

Was that civil file involving a case against Judge Berman?

* * *

Was that file ever returned to your possession?

Has that file been returned?" (Ramos Dep., p. 214).

- "After the charges were dropped against Mr. Roy, in October of the year 2000, did he return to live with you?" (Ramos Dep., p. 214).

Additionally, these other areas of inquiry are not even remotely related to any conception of prosecution for her apparent untrue statements. For example, the questions about the "Judge Berman file" perhaps taken from her living quarters by Frank Roy, questions pertaining to her relationship with Frank Roy, and questions regarding the statement which she made which she may have made to someone in the State Attorney's Office to the effect that she was a creative writer, are not statements which could be argued to be self-incriminatory.

Ms. Ramos also argues that any statements she may have made to the State Attorneys' Office are privileged. The privilege upon which she bases this argument is a work product privilege. She relies on Horning-Keating v. State, 777 So. 2d 438 (Fla. 5th DCA 2001), Eagan v. Demanio, 294 So. 2d 639 (Fla. 1974), Olson v. State, 705 So. 2d 687 (Fla. 5th DCA 1988). These cases, and the work product privilege which they discuss, are not applicable in the instant case. The "oral and unrecorded statements of witnesses" which are discussed in these cases are statements made to a State Attorney, or State Attorney investigator, in the context of an investigation by the State Attorney's Office. The work product privilege involved is to protect the mental impressions and work of the attorney in preparing for a case. Here, the statement made by Ms. Ramos, which Judge Berman's counsel attempted to explore on deposition, was not in the context of an investigation by the State Attorney's Office, but in the

context of Ms. Ramos dropping and withdrawing her charges with regard to Frank Roy so that there would be no case against Mr. Roy. In fact, those statements succeeded and the charges against Mr. Roy were dismissed.

As the deposition of Ms. Ramos reflects, there are absolutely no witnesses to any allegedly improper statement or allegedly improper act which she attributes to Judge Berman. Thus, both her credibility and Judge Berman's credibility will be of tantamount importance. There is no basis in fact or law for Ms. Ramos to refuse to answer the questions which were propounded to her on her deposition.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to John R. Beranek, Esquire and Honorable James Jorgenson and by U.S. Mail to the persons on the attached Service List this ____ day of July, 2001.

Respectfully submitted,

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